

SENATE BILL NO. 1

INTRODUCED BY D. GRIMES

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO EMPLOYMENT REFERENCES, BLACKLISTING, AND DEFAMATION; CLARIFYING THAT CONSENT TO PUBLICATION CONSTITUTES A PRIVILEGE UNDER DEFAMATION LAW; PROVIDING THAT EMPLOYMENT REFERENCES ARE SUBJECT TO DEFAMATION LAW; DEFINING "BLACKLISTING" AND DISTINGUISHING EMPLOYMENT REFERENCES AND BLACKLISTING; REPEALING LIMITS ON LIABILITY FOR EMPLOYMENT REFERENCES; AMENDING SECTIONS 27-1-804, 39-2-801, AND 39-2-803, MCA; REPEALING SECTIONS 27-1-737, 39-2-802, AND 39-2-804, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-1-804, MCA, is amended to read:

"27-1-804. What communications are privileged -- applicability to employment references. (1)

A privileged publication is one that is made:

~~(1)(a)~~ (a) in the proper discharge of an official duty;

~~(2)(b)~~ (b) in any legislative or judicial proceeding or in any other official proceeding authorized by law;

(c) with the consent of the defamed person, unless the consent is obtained by fraud or duress or is given by one who lacks the capacity to consent;

~~(3)(d)~~ (d) in a communication without malice ~~to a person interested therein by one who is also interested or by one who stands in such relation to the person interested as to afford a reasonable ground for supposing the motive for the communication innocent or who is requested by the person interested to give the information~~ between persons each having an interest or duty with respect to the subject matter of the communication and that is made with the purpose to further the interest or duty;

~~(4)(e)~~ (e) by a fair and true report without malice of a judicial, legislative, or other public official proceeding or of anything said in the course ~~thereof~~ of the official proceeding.

(2) The provisions of this section apply to employment references."

1 **Section 2.** Section 39-2-801, MCA, is amended to read:

2 **"39-2-801. Employee to be furnished on demand with reason for discharge.** (1) ~~It is the duty of~~
3 ~~any A~~ person after having discharged any who discharges an employee from service shall, upon written
4 demand by the discharged employee made within 30 days of the discharge, ~~to~~ furnish the discharged
5 employee ~~in writing~~ with a written statement of reasons for the discharge within 30 days of receipt of the
6 written demand. ~~Except as provided in subsection (3), if the person refuses to do so within a reasonable~~
7 ~~time after the demand, it is unlawful for the person to furnish any statement of the reasons for the~~
8 ~~discharge to any person or in any way to blacklist or to prevent the discharged person from procuring~~
9 ~~employment elsewhere, subject to the penalties and damages prescribed in this part.~~

10 (2) A ~~written~~ demand under ~~this part~~ subsection (1) must advise the person who discharged the
11 employee of the possibility that the ~~statements~~ statement may be used in litigation.

12 (3) A response to the demand may be modified at any time and may not limit a person's ability to
13 present a full defense in any action brought by the discharged employee. Failure to provide a response as
14 required under subsection (1) may not limit a person's ability to present a full defense in any action brought
15 by the discharged employee."

16
17 **Section 3.** Section 39-2-803, MCA, is amended to read:

18 **"39-2-803. Blacklisting prohibited -- definition -- penalties.** (1) ~~If any company or corporation in~~
19 ~~this state A~~ person who blacklists or authorizes or allows any of its agents to blacklist or any person does
20 blacklist any discharged the blacklisting of a former employee or ~~attempts by word or writing or any other~~
21 ~~means whatever to prevent any discharged employee or any employee who may have voluntarily left the~~
22 ~~company's service from obtaining employment with another person, except as provided for in 39-2-802,~~
23 ~~such company or corporation or person is liable in~~ commits the offense of blacklisting and upon conviction
24 shall be fined not to exceed \$500, or be imprisoned in the county jail for a term not to exceed 6 months,
25 or both. In any civil action arising out of the blacklisting, a judge or jury may award punitive damages to
26 ~~such employee so prevented from obtaining employment, to be recovered by him in a civil action, and is~~
27 ~~also punishable as provided in 39-2-804~~ 27-1-220.

28 (2) For purposes of this section:

29 (a) "blacklist" or "blacklisting" means ~~to prepare~~ THE COMMUNICATION BY AN EMPLOYER OR FORMER
30 EMPLOYER TO A PROSPECTIVE EMPLOYER OF a list, written or oral, of persons identified for special avoidance,

1 ~~antagonism, or enmity on the part of those who prepare the list or those among whom it is intended to~~
2 ~~circulate~~ THE EMPLOYER, FORMER EMPLOYER, OR PROSPECTIVE EMPLOYER; and

3 ~~(b) individual employment references~~ THE FOLLOWING do not constitute blacklisting:

4 (i) INDIVIDUAL EMPLOYMENT REFERENCES; OR

5 (ii) TRUTHFUL STATEMENTS CONCERNING JOB PERFORMANCE OR THE ABILITY OR THE LACK OF ABILITY TO PERFORM
6 A JOB."

7
8 NEW SECTION. **Section 4. Repealer.** Sections 27-1-737, 39-2-802, and 39-2-804, MCA, are
9 repealed.

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11 NEW SECTION. **Section 5. Saving clause.** [This act] does not affect rights and duties that
12 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
13 act].

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15 NEW SECTION. **Section 6. Effective date.** [This act] is effective on passage and approval.

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17 NEW SECTION. **Section 7. Applicability.** [This act] applies to causes of action arising on or after
18 [the effective date of this act].

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